



**TOWN OF TEWKSBURY
CONSERVATION COMMISSION
999 Whipple Road
Tewksbury, MA 01876**

Stephen Deackoff, Chairman
Anthony Ippolito, Vice-Chair
Sean Czarniecki, Clerk
Dennis Sheehan
Carolina Linder

**MEETING MINUTES
May 14, 2014**

The meeting was called to order by Steve Deackoff, Chairman, at 7:02 p.m. at the Pike House. Present was Anthony Ippolito, Sean Czarniecki, Dennis Sheehan, and Carolina Linder. Also in attendance was Kyle Boyd, Conservation Agent.

Approval of Meeting Minutes - March 19, 2014

MOTION: Mr. Czarniecki made the motion to approve the March 19, 2014 meeting minutes as amended; seconded by Mr. Ippolito and the motion carried 5-0

A) Continued Notice of Intent, Steve Cox, 1 Radcliff Road, Map 52, Lot 25, DEP#305-966

The applicant has requested this matter be continued to the next meeting on June 3, 2014.

MOTION: Mr. Ippolito made the motion to continue Notice of Intent, Steve Cox, 1 Radcliff Road, Map 52, Lot 25, DEP# 305-966 to June 3, 2014 at 7:02 p.m.; seconded by Mr. Czarniecki and the motion carried 5-0.

B) Continued Notice of Intent, John Berube, 250 Trull Road, Map 24, Lot 47, DEP #305-968

Present was John Berube of 2543 Main Street, Tewksbury. Mr. Berube noted that he is still awaiting response from National Habitat and requested this matter be continued.

MOTION: Mr. Ippolito made the motion to continue Notice of Intent, John Berube, 250 Trull Road, Map 24, Lot 47, DEP #305-968 to June 3, 2014 at 7:05 p.m.; seconded by Mr. Czarniecki and the motion carried 5-0.

C) Certificate of Compliance, John Berube, 2543 Main Street, Map 94, Lot 63, DEP#305 921

Present was John Berube of 2543 Main Street, Tewksbury. Mr. Berube explained that the original plan was to demolish the existing home and reconstruct a new home; however, the home was rehabilitated instead. Mr. Berube noted that none of the excavation work was done.

Mr. Deackoff noted that the Commission previously approved a non substantial change to the notice of intent.

Mr. Czarniecki noted that some work did occur and that some erosion is occurring as the wetlands are not protected. Mr. Czarniecki request this work be finalized. Mr. Berube explained that a water main break along Main Street occurred and noted that he will look into this. Mr. Czarniecki suggested Bernstein Markers be put in place as outlined in the Order of Conditions. Mr. Berube will work with Mr. Boyd on obtaining and installing the Bernstein Markers.

Mr. Deackoff requested Mr. Berube stabilize the area and then come back before the Commission.

MOTION: Mr. Czarniecki made the motion to continue Certificate of compliance, John Berube, 2543 Main Street, Map 94, Lot 63, DEP#305-921 to June 3, 2014 at 7:07 p.m.; seconded by Mr. Ippolito and the motion carried 5-0.

D) Enforcement Order, Brian MacNeill, 10 Cooney Road, Map 26, Lot 5

Present was Brian and Jenna MacNeill of 10 Cooney Road. Mr. Boyd explained that he received a complaint from an abutter regarding this property stating that fill was spread into the no disturb zone up to the wetland area. The fill was a historic mound located at 10 Cooney Road and has in fact been pushed up to the no disturb area. As a result, an enforcement order was issued and all work was to cease and desist. Mr. Boyd noted that the MacNeill's have indicated that they wanted the fill to plant a garden and Mr. Boyd informed them of the regulations and why they are in violation. Mr. Boyd noted that he is in receipt of correspondence from a Wetland Scientist hired by an abutter, Katherine Mendonca. Mr. Boyd provided the members with a copy of the correspondence.

Mr. Deackoff explained to Mr. MacNeill that ultimately the Commission is going to want to see the area restored and asked Mr. MacNeill if he is aware of what he did wrong. Mr. MacNeill confirmed this and explained that he removed some prickly bushes along the 25 foot buffer and he put the dirt pile 45 to 100 feet from the buffer zone for a garden with wire fence. Mr. MacNeill noted that he intended to replant raspberry bushes where the prickly bushes were and to replant grass in the disturbed lawn area. Mr. Deackoff asked if Mr. MacNeill was aware of the 25 foot buffer. Mr. MacNeill explained that he was not aware of the buffer until he was notified by his neighbor at which point he was done 95%

completed with the work. Mr. MacNeill explained that he just purchased the home in September and that he was trying to make the property look nice.

Katherine Mendonca and Kristine Jarvis of 1066 Andover Street came forward. Mr. Deackoff asked if Ms. Mendonca was aware that he was doing work for that long of a period of time. Ms. Jarvis explained that Mr. McNeill was doing work, but not within the wetlands and noted that doing yard work is different than taking down bordering vegetated wetlands; Mr. MacNeill took down a hillside that had been there for 30 years. Ms. Jarvis noted that their property is taking on more water as a result of what was done by Mr. MacNeill.

Mr. MacNeill explained that the pile of dirt was put there by the previous owner and was not part of the natural grade. Ms. Jarvis noted that the pile was put there in the 1980's and was not to be touched.

A copy of the documentation provided by Ms. Mendonca and Ms. Jarvis was provided to Mr. and Mrs. MacNeill.

Mr. MacNeill asked if the town engineer has viewed the site. Mr. Boyd confirmed this and explained that the town engineer concurs that the area needs to be restored. Mr. Deackoff noted that the report provided by Omni Environmental also states the area should be restored. Mr. Deackoff read a portion of Omni Environmental's report aloud and noted that it states that "at a minimum clearing and grading activity occurred within the 25 foot no disturb". Mr. MacNeill noted that this is hearsay. Ms. Jarvis explained that Omni Environmental are wetland scientists who came to view the property. Mr. Boyd explained that Mr. MacNeill is entitled to hire his own scientist to determine what was done and how it can be restored. Mr. Deackoff explained these types of matters are scientific and not a matter of hearsay. Mrs. MacNeill asked what happens if their wetland scientist disagrees and Mr. Deackoff explained that the matter would have to be worked out.

Mr. Deackoff explained to the MacNeill's that they will need to restore the area and hire a Wetland Scientist to repair the damage that was done to the wetlands and bordering vegetated wetlands. Mr. MacNeill asked what he should do with the bare soil in the meantime. Mr. Deackoff suggested a silt fence be put in place to prevent any further erosion into the wetlands until a restoration plan has been determined. Ms. Linder explained that any area in question cannot be touched as a cease and desist has been issued. Mr. MacNeill asked if he can plant his garden as he already has the plants. Mr. Deackoff explained that it depends on where the garden is placed and noted that it cannot be within a buffer zone. Mr. Deackoff suggested the garden be put on the Andover Street side of the property. It was recommended that no work be done until the area has been stabilized and the silt fence has been put in place.

Mr. Deackoff suggested continuing this matter until the next meeting on June 3, 2014 and explained that the enforcement order is still in place.

MOTION: Mr. Czarniecki made the motion to continue Enforcement Order, Brian MacNeill, 10 Cooney Road, Map 26, Lot 5 to June 3, 2014 at 7:09 p.m.; seconded by Mr. Ippolito and the motion carried 5 0.

E) Enforcement Order, Attilio Dispersio, Jr., 1275 Shawsheen Street, Map 101, Lot 76

Present was Attilio Dispersio of 1275 Shawsheen Street and his daughter, Jade Dispersio.

Mr. Boyd explained that he received a complaint from a town staff member regarding this property. Mr. Boyd visited the site and saw that fill was being brought in and he left his card. Mr. Boyd met with Mr. Dispersio at the site and trees had also been taken down and the wetlands have been disturbed.

Mr. Dispersio hired Steve Erickson to flag the wetlands and Mr. Erickson indicated that the wetlands have been disturbed and he is unable to clearly determine the wetland boundary as there could be wetlands under the soil. Mr. Erickson has requested a plot plan be done as well as an historical analysis of the wetlands to determine the wetland line and he will then help determine a restoration plan.

Ms. Dispersio noted that they had a plot plan done some years ago; however, they do not have a copy, and asked how they could obtain a copy of the plan. Mr. Boyd suggested contacting the building department for this and noted that he will check as well.

Mr. Dispersio noted that he is disabled and money is tight. As a result, it may take him a little longer to correct the area. Mr. Deackoff explained that no further erosion shall occur into the wetlands. Ms. Linder suggested a silt fence be put in place. Mr. Dispersio will work with Mr. Boyd on the installation of the siltation fence.

Mr. Czarniecki noted that there is a date providing a deadline for submittal of April 23, 2014. Mr. Boyd noted that he will correct this.

MOTION: Mr. Czarniecki made the motion to continue Enforcement Order, Attilio Dispersio, Jr., 1275 Shawsheen Street, Map 101, Lot 76 to June 3, 2013 at 7:11 p.m.; seconded by Mr. Ippolito and the motion carried 5-0.

F) Enforcement Order, Michael & Sophia Dediu, 230 North Street, Map 62, Lot 8

Present was Michael Dediu of 230 North Street. Mr. Boyd explained that he received a call from an abutter that there were some materials in the river located behind their home that should not be. The abutter informed him that their dog had gotten caught up in chicken wire and they are concerned that this could be causing their flooding problem.

Mr. Boyd spoke with Mr. Dediu and informed him of the laws regarding the wetlands and an enforcement order was issued.

Mr. Dediu apologized for his accent and explained that he is also hard of hearing and requested the member's speaker louder and slower.

Mr. Deackoff asked if there is an accumulation of trash in this area and Mr. Dediu noted that there is not and explained that the flooding is the result of beaver dams. Mr. Boyd noted that there is a makeshift beaver trap (wire diverter) that was put in place. Mr. Dediu explained that he put in the device at the recommendation of someone as it would still allow the water to flow. Mr. Dediu noted that he has taken out the wires.

Mr. Deackoff asked if Mr. Dediu has spoken with the Health Department about the beaver problem. Mr. Boyd provided Mr. Dediu with information on beaver activity and what options are available and explained that the Conservation Commission and Health Department typically work together on these issues. Mr. Boyd noted that the removal of a beaver dam is a Federal offense and DEP approval is required ahead of time.

Ms. Linder suggested it be determined if there were problems prior to the wires being installed.

Mr. Ippolito noted that he visited this site and witnessed the wire and debris. Mr. Ippolito explained that the beavers will cause these types of flooding problems and suggested contacting the proper authorities to address the beaver problem and to correct the problems with the river.

Mr. Czarniecki asked if the ditch/river is between the properties or if it is on Mr. Dediu's property and Mr. Dediu explained that it is located on his property. Mr. Czarniecki suggested removing the debris, wires, etc. and starting from the beginning with the help of proper authorities to follow the proper procedures.

Matthew and Kara Lombardi of 220 North Street came forward. Ms. Lombardi explained that the water has been getting closer and closer to their home. They have viewed manmade materials in the river and believe this could be contributing to the increased water. Mr. Deackoff asked if it is possible that the beavers could be bringing in the manmade material and Mr. Boyd noted that it is his opinion that this is not the case in this situation. Mr. Boyd noted that he viewed three distinct beaver dams and that there should also not be items within 100 feet of the river that could be used by the beavers to help make a dam.

Discussion took place on diverters and Mr. Boyd noted that they can only be used in emergency situations.

Mr. Dediu noted that he removed the wire on May 5, 2014. Mr. Deackoff asked if there are currently manmade items in the dam and Mr. Lombardi noted that the debris that built up as a result of the wire is still in the dam. Mr. Boyd noted that he has not visited the site since the wire was removed as a cease and desist had been issued.

MOTION: Mr. Ippolito made the motion to continue Enforcement Order, Michael & Sophia Dedi, 230 North Street, Map 62, Lot 8 to June 3, 2014 at 7:13 p.m.; seconded by Mr. Sheehan and the motion carried 5-0.

G) Enforcement Order, Villa Sandra Cardenas, 394 Whipple Road, Map 20, Lot 4

Present was Sandra Cardenas and Jose Sanchez of 394 Whipple Road.

Mr. Boyd noted that he visited this site at the request of a town official who had witnessed some work being done close to the wetland area. Mr. Boyd spoke with Ms. Cardenas and informed her of what needs to be done to correct the situation. The work that is being done is within 100 feet of a resource area and requires a professional to mark out the wetlands so the limits are known and necessary erosion controls can be put in place.

Mr. Deackoff asked if Mr. Boyd feels this work would require a notice of intent rather than a request for determination. Mr. Czarniecki noted that the wetland boundary is no longer clear and there is a possibility the work could be within the 25 foot buffer, but without knowing the exact boundary it is difficult to determine. Mr. Czarniecki suggested the wetland be delineated and noted that over approximately half an acre has been graded. Discussion took place on when a land disturbance permit is required. Mr. Boyd suggested a wetland delineation be done and a land disturbance permit be applied for through the community development office.

Ms. Cardenas asked what is meant by “restoration”. Mr. Deackoff explained that she would have to change the grading back to its original state, remove any debris that has been put in the wetlands, and possibly plant trees and/or wetland mix, etc. Mr. Czarniecki noted that this would all be done under the supervision of the Commission.

MOTION: Mr. Ippolito made the motion to continue Enforcement Order, Villa Sandra Cardenas, 394 Whipple Road, Map 20, Lot 4 to June 3, 2014 at 7:15 p.m.; seconded by Mr. Sheehan and the motion carried 5-0.

New Business

Ms. Linder asked if there is anything else that can be done to inform residents about the wetland regulations. Mr. Deackoff explained that the Informational and Educational Subcommittee recently sent out a notice regarding the wetlands with the census and stated to contact the Commission if they have any concerns about a wetland area. Mr. Deackoff feels that the recent increase in enforcement orders could be the result of the notice. Discussion took place on scheduling another Informational and Educational Subcommittee meeting to discuss this further.

Old Business

There was no old business.

Administrator's Report

Mr. Boyd noted that he has drafted a filing fee schedule and requested the Commission review the fee schedule and provide their input. The fee schedule will be discussed further at the next Bylaw Subcommittee meeting on June 3, 2014 at 6:00 p.m.

Adjournment

MOTION: Mr. Sheehan made the motion to adjourn; seconded by Mr. Ippolito and the motion carried 5-0.

Approved: 6/4/14

List of documents for 5/14/14 Agenda

Documents can be located at the Community Development Office

Approval of Meeting Minutes-April 23, 2014

- *Conservation Commission meeting minutes dated April 23, 2014*

- A. 7:02 P.M. (Continued) Notice of Intent, Steve Cox, 1 Radcliff Road, Map 52 Lot 25, 305-966**
- *WPA Form 3-Notice of Intent*
 - *Drainage Calculations dated March 21, 2014*
 - *Pamella Merrill review letter dated April 15, 2014*
 - *Weston & Sampson review letter dated April 14, 2014*
- B. 7:05 P.M (Continued) Notice of Intent, John Berube, 250 Trull Road, Map 24 Lot 47, DEP 305-968**
- *WPA Form 3- Notice of Intent*
 - *Certified Plot Plan dated 3/23/14*
- C. 7:07 P.M Certificate of Compliance, John Berube, 2543 Main Street, Map 94 Lot 63, DEP # 305-921**
- *WPA Form 8A-Request for Certificate of Compliance*
 - *WPA Form 5-Order of Conditions DEP # 305-921*
- D. 7:09 P.M Enforcement Order, Brian MacNiell, 10 Coonie Road, Map 26 Lot 5**
- *Enforcement Order dated 4/15/14*
 - *Catherine Mendonca letter submittal*
- E. 7:11 P.M Enforcement Order, Atillio Dispersio Jr., 1275 Shawsheen Street, Map 101 Lot 76**
- *Enforcement Order dated 4/16/14*
- F. 7:13 P.M Enforcement Order, Michael & Sophia Dediu, 230 North Street, Map 62 Lot 8**
- *Enforcement Order dated 5/5/14*
 - *Email correspondence package between Mr. Dediu and Mr. Boyd*
 - *Email from Cara Jenkins dated 5/14/14*
- G. 7:15 P.M Enforcement Order, Villa Sandra Cardenas, 394 Whipple Road, Map 20 Lot 4**
- *Enforcement Order dated 5/5/14*